

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

GUADALUPE GARCIA,

Plaintiff-Claimant,

v.

Case No. 14-C-415

**CAROLYN W. COLVIN,
Acting Commissioner of Social Security,**

Defendant-Respondent.

DECISION AND ORDER

Plaintiff-Claimant Guadalupe Garcia (“Garcia”) seeks leave to proceed *in forma pauperis* on her appeal from the denial of her social security disability benefits and Medicare claims.¹ In order to authorize a litigant to proceed *in forma pauperis* (“IFP”), the Court must make two determinations: First, whether the litigant is unable to pay the costs of commencing this action; and, second, whether the action is frivolous or malicious. 28 U.S.C. §§ 1915(a) and (e)(2)(B)(i). The Court must deny a request to proceed IFP if (1) the allegation of poverty is untrue; (2) the action is frivolous; (3) the action fails to state a claim; or (4) the action seeks monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2).

By her petition and affidavit to proceed *in forma pauperis*, Garcia avers that

¹ Section 1395ff(b)(1)(A) of Title 42 of the United States Code, (West, Westlaw through P.L. 113-93, 2014), provides for judicial review of the final decision of the Secretary of Health and Human Services under 42 U.S.C. § 405(g). See *Wilkins v. Sullivan*, 889 F.2d 135, 141 (7th Cir. 1989).

she is unemployed and married. Garcia's husband receives disability compensation in the amount of \$1,913.00 and he has monthly rental income of \$3,238.00. Garcia and her husband own a residence worth \$150,400 with a \$15,787 mortgage, meaning that they have over \$134,000 in equity. They also own three older vehicles worth a total of \$4,000; and they have \$400 in checking and/or saving accounts. Garcia's expenses which total \$5,041.69 result in about \$190.00 per month to spare. However, there is also inconsistency in the information because Garcia indicates that her taxes and home insurance are included in their mortgage; nonetheless, she also lists home insurance (\$47.71) and property insurance (\$144.00) as monthly expenses. So Garcia and her husband may have about another \$190 to spare.

Based on the information provided, the Court concludes that, although it is a close question,² Garcia has satisfied the requirements of 28 U.S.C. § 1915(a) by demonstrating that she is unable to pay the entire \$350 filing fee for this action.

Furthermore, Garcia's Complaint, supplemented by the accompanying brief, state an arguable claim for relief. Accordingly, Garcia's petition for leave to proceed *in forma pauperis* is granted.

² Effective May 1, 2013, the filing fee for a civil case was increased to \$400.00 by the addition of a new \$50.00 administrative fee for filing a civil action, suit, or proceeding in a district court. See Judicial Conference Schedule of Fees-District Court Miscellaneous Fee Schedule, 28 U.S.C. § 1914, No. 14. A litigant who is granted IFP status, however, is exempt from paying the new \$50.00 fee and must pay a total fee of \$350.00.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Garcia's petition for leave to proceed *in forma pauperis* (ECF No. 2) is
GRANTED.

Dated at Milwaukee, Wisconsin, this 22nd day of April, 2014.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge